

## INDEX

	Page
Opinions below .....	1
Jurisdiction .....	1
Question presented .....	2
Statute involved .....	2
Statement .....	3
Summary of argument .....	8
Argument:	
The Commission correctly ruled that Section 11(b)(1) (A) of the Public Utility Holding Company Act of 1935 prohibits a holding company from retaining more than one integrated public utility system unless the company shows that the additional system sought to be retained is incapable of sound and economical operation independent of the principal system .....	11
A. The history and design of Section 11(b)(1) (A) support the Commission's interpretation .....	13
B. The Commission's longstanding interpretation is entitled to great deference .....	26
C. The Commission's test, but not that of the court below, permits meaningful consideration of the competitive advantages flowing from the operation of the "additional" gas system independent of the "principal" electric system .....	34
Conclusion .....	39
Appendix (statutory provisions) .....	41

## CITATIONS

### Cases:

#### Court decisions:

<i>Atlantic Cleaners &amp; Dyers v. United States</i> , 286 U.S. 427 .....	24
<i>Billings v. Truesdell</i> , 321 U.S. 542 .....	27

## Cases—Continued

## Court decisions:

<i>Engineers Public Service Co. v. Securities and Exchange Commission</i> , 138 F. 2d 936, certiorari granted, 322 U.S. 723, vacated as moot, 332 U.S. 788-----	19, 32, 33
<i>First Nat'l Bank in St. Louis v. Missouri</i> , 263 U.S. 640-----	27
<i>Gray v. Powell</i> , 314 U.S. 402-----	27
<i>Hastings &amp; Dakota R.R. Co. v. Whitney</i> , 132 U.S. 337-----	27
<i>Lahti v. New England Power Ass'n</i> , 160 F. 2d 845-----	37
<i>Leedom v. International Union</i> , 352 U.S. 145-----	19
<i>Louisiana Public Service Commission v. Securities and Exchange Commission</i> , 235 F. 2d 167, reversed on jurisdictional grounds, 353 U.S. 368-----	33, 34
<i>North American Co. v. Securities and Exchange Commission</i> , 327 U.S. 686-----	11, 17
<i>Philadelphia Co. v. Securities and Exchange Commission</i> , 177 F. 2d 720-----	10, 18, 19, 32, 37
<i>Power Reactor Co. v. Electricians</i> , 367 U.S. 396-----	27
<i>Surgett v. Lapice</i> , 8 How. 48-----	27
<i>Udall v. Tallman</i> , 380 U.S. 1-----	27
<i>Unemployment Comm'n v. Aragon</i> , 329 U.S. 143-----	27
<i>United Corporation In re</i> , 184 F. Supp. 502, affirmed, 283 F. 2d 593-----	34
<i>United States v. Moore</i> , 95 U.S. 760-----	27
<i>Universal Battery Co. v. United States</i> , 281 U.S. 580-----	27
<b>Securities and Exchange Commission Decisions:</b>	
<i>American Gas &amp; Electric Co.</i> , 21 S.E.C. 575-----	31
<i>Cities Service Co.</i> , 15 S.E.C. 962-----	31
<i>Cities Service Power &amp; Light Co.</i> , 14 S.E.C. 28-----	31, 36
<i>Columbia Gas &amp; Electric Corp.</i> , 8 S.E.C. 443-----	4
<i>Commonwealth &amp; Southern Corp.</i> , 26 S.E.C. 464-----	31
<i>Eastern Utilities Associates</i> , 31 S.E.C. 329-----	31
<i>Engineers Public Service Co.</i> , 12 S.E.C. 41-----	20,
	27, 29, 30, 31
<i>Federal Light &amp; Traction Co.</i> , 15 S.E.C. 675-----	31
<i>General Public Utilities Corp.</i> , 32 S.E.C. 807-----	31
<i>Middle South Utilities, Inc.</i> , 35 S.E.C. 1-----	31

## Cases—Continued

Securities and Exchange Commission Decisions—Con.	Page
<i>Middle West Corp.</i> , 15 S.E.C. 309.....	31
<i>New England Electric System</i> , 38 S.E.C. 193.....	4
<i>North American Co., The</i> , 11 S.E.C. 194.... 27, 28, 29, 31	
<i>North American Co., The</i> , 18 S.E.C. 611.....	37
<i>North American Co., The</i> , 32 S.E.C. 169.....	31
<i>Pennsylvania Gas &amp; Electric Corp.</i> , 28 S.E.C. 553.....	31
<i>Peoples Light &amp; Power Co.</i> , 20 S.E.C. 357.....	31
<i>Philadelphia Co.</i> , 28 S.E.C. 35..... 4, 10, 17, 27, 31	
<i>Republic Service Corp.</i> , 23 S.E.C. 436.....	31
<i>United Gas Improvement Co., The</i> , 9 S.E.C. 52....	4
<b>Miscellaneous Administrative Decisions:</b>	
<i>Cambridge Gas Light Co.</i> , P.U.R. 1930 D, 263.....	36
<i>Lynn Gas and Electric Co.</i> , 31 P.U.R. 3d 209.....	36
<b>Statutes:</b>	
Administrative Procedure Act, 5 U.S.C. 1001, <i>et seq.</i> :	
Section 5(a), 5 U.S.C. 1004(a).....	23
Section 7(b)(6), 5 U.S.C. 1006(b)(6).....	23
Public Utility Holding Company Act of 1935, 49 Stat. 803, <i>et seq.</i> :	
Section 1, 15 U.S.C. 79a.....	3, 41, 42
Section 1(b), 15 U.S.C. 79a(b).....	9, 41
Section 1(b)(2), 15 U.S.C. 79a(b)(2)..... 11, 17, 20, 42	
Section 1(b)(4), 15 U.S.C. 79a(b)(4)..... 17, 20, 42	
Section 1(b)(5), 15 U.S.C. 79a(b)(5)..... 20, 42	
Section 1(c), 15 U.S.C. 79a(c).....	42
Section 2(a)(29), 15 U.S.C. 79b(a)(29)..... 3, 43	
Section 2(a)(29)(A), 15 U.S.C. 79b(a)(29)(A)....	3,
	25, 26, 43
Section 2(a)(29)(B), 15 U.S.C. 79b(a)(29)(B)....	4,
	9, 21, 22, 24, 25, 26, 44
Section 5, 15 U.S.C. 79e.....	3
Section 7(d)(3), 15 U.S.C. 79g(d)(3).....	20
Section 8, 15 U.S.C. 79h.....	35
Section 10(e)(2), 15 U.S.C. 79j(e)(2).....	20
Section 11, 15 U.S.C. 79k.....	15
Section 11 (b)(1), 15 U.S.C. 79k(b)(1).....	2,
	3, 4, 5, 8, 11, 12, 17, 19, 20, 22, 24, 25, 26, 34
Section 11(b)(1)(A), 15 U.S.C. 79k(b)(1)(A)....	6,
	7, 8, 9, 10, 11, 12, 13, 19, 21, 23, 24, 25, 26, 27, 28, 32, 33,
	34, 35.

**Statutes—Continued****Public Utility Holding Company Act of 1935, 49 Stat.****803, *et seq.*—Continued**

Page

Section 12(d), 15 U.S.C. 79l(d).....	20
Section 12(f), 15 U.S.C. 79l(f).....	20
Section 12(g), 15 U.S.C. 79l(g).....	20
Section 13, 15 U.S.C. 79m.....	20

**Miscellaneous:****79 Cong. Rec.:**

10838.....	15
10842.....	15
14479.....	16
14781.....	14
14520.....	16

H. Rep. No. 1318 on S. 2796, 74th Cong., 1st Sess.....	14, 15
--	--------

H. Rep. No. 1903, 74th Cong., 1st Sess.....	8, 15
---	-------

<b>Hearings Before the House Committee on Interstate and Foreign Commerce on H.R. 5423, 74th Cong., 1st Sess.....</b>	<b>14, 20, 35</b>
---	-------------------

<b>Hearings Before the Senate Committee on Interstate</b>
---

<b>Commerce on S. 1725, 74th Cong., 1st Sess.....</b>	<b>13, 20, 35</b>
---	-------------------

<b>Holding Company Act Release No. 11016 (Jan. 22, 1952).....</b>	<b>5</b>
---	----------

<b>Report of National Power Policy Committee, H.</b>
--

<b>Doc. No. 137, 74th Cong., 1st Sess., appended to</b>
---

<b>S. Rep. No. 621, 74th Cong., 1st Sess.....</b>	<b>8, 13, 35</b>
---	------------------

<b>S. 1725, 74th Cong., 1st Sess.....</b>	<b>14</b>
---	-----------

<b>S. 2796, 74th Cong., 1st Sess.....</b>	<b>14</b>
---	-----------

<b>S. 1336, 89th Cong., 1st Sess.....</b>	<b>23</b>
---	-----------

<b>S. Rep. No. 621, 74th Cong., 1st Sess.....</b>	<b>11, 14, 35, 36</b>
---	-----------------------

# In the Supreme Court of the United States

OCTOBER TERM, 1965

---

No. 636

SECURITIES AND EXCHANGE COMMISSION, PETITIONER

v.

NEW ENGLAND ELECTRIC SYSTEM, ET AL.

---

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF  
APPEALS FOR THE FIRST CIRCUIT

---

BRIEF FOR THE SECURITIES AND EXCHANGE COMMISSION

---

## OPINIONS BELOW

The opinion of the court of appeals (R. 1455-1471) is reported at 346 F. 2d 399. The findings and opinion of the Securities and Exchange Commission, dated March 19, 1964 (R. 1254-1282), are reported in the Commission's Holding Company Act Release No. 15096.

## JURISDICTION

The judgment of the court of appeals was entered on June 4, 1965 (R. 1471-1472). On September 2, 1965, Mr. Justice Black extended the time to file a petition for a writ of certiorari to October 2, 1965. The petition was filed on October 1, 1965, and was

granted on December 13, 1965 (R. 1472). The jurisdiction of this Court rests on 28 U.S.C. 1254(1).

#### **QUESTION PRESENTED**

Section 11(b)(1) of the Public Utility Holding Company Act of 1935, 15 U.S.C. 79k(b)(1), permits a registered holding company to control one or more integrated public-utility system in addition to its principal integrated system only if the Commission finds, *inter alia*, that "Each of such additional systems cannot be operated as an independent system without the loss of substantial economies which can be secured by the retention of control by such holding company of such system \* \* \*." The question presented is whether the court below erred in rejecting the Commission's longstanding interpretation that, under this provision, "the loss of substantial economies" must be such as to render the additional system incapable of sound and economical operation independent of the principal system and in holding instead that the required loss is merely one which, in ordinary business parlance, is of a substantial nature.

#### **STATUTE INVOLVED**

Section 11(b)(1) of the Public Utility Holding Company Act of 1935, 49 Stat. 820, 15 U.S.C. 79k(b)(1), provides in pertinent part:

It shall be the duty of the Commission, as soon as practicable after January 1, 1938:

(1) To require by order, after notice and opportunity for hearing, that each registered holding company, and each subsidiary company thereof, shall take such action as the Commis-

sion shall find necessary to limit the operations of the holding-company system of which such company is a part to a single integrated public-utility system, \* \* \* *Provided, however,* That the Commission shall permit a registered holding company to continue to control one or more additional integrated public-utility systems, if, after notice and opportunity for hearing, it finds that—

(A) Each of such additional systems cannot be operated as an independent system without the loss of substantial economies which can be secured by the retention of control by such holding company of such system \* \* \*.

Pertinent parts of Section 1 and Section 2(a)(29) of the Act are set forth in an Appendix, *infra*, pp. 41-44.

#### STATEMENT

On August 5, 1957, the Securities and Exchange Commission instituted proceedings under Section 11(b)(1) of the Public Utility Holding Company Act of 1935, 15 U.S.C. 79k(b)(1), to determine the extent to which New England Electric System ("NEES"), a holding company registered under Section 5 of the Act, 15 U.S.C. 79e, could lawfully retain control over the electric, gas and other properties in its holding company system. The initial phase of the proceedings terminated on February 20, 1958, when the Commission held that the electric utility subsidiaries of NEES comprised an "integrated electric utility system" as defined in Section 2(a)(29)(A), 15 U.S.C. 79b(2)(29)(A).<sup>1</sup> NEES elected to retain

<sup>1</sup> *New England Electric System*, 38 S.E.C. 193.